simply a method of financing. I think that is something that has been lost in the various arguments. This is not a case where you have individual obligations that are kind of floating around. What you have in place is facilities Enron can draw on every time a letter of credit is issued. Even if the letter of credit is not drawndown, it reduces the credit limit, and there is no question that Enron is directly obligated each time a letter is issued and ultimately for a drawdown.

So in that context, Baupost basically has made two arguments in their 1987 Indenture. The first is somehow that the letter of credit is not an instrument under the 1987 definition of "Senior Indebtedness." We have cited, Your Honor, the cases on that. It is just wrong. A Reimbursement Agreement is a contract and it is an instrument. There is a Second Circuit case that discusses that, the Red Rock case cited at page 18 of our objection. Letters of credits are instruments and are routinely

seen as such. Those cases are cited at page 19. So I think that there is no intent in this definition to somehow limit "instrument" to negotiable instrument. There is nothing that would indicate that in anyway, shape, or form. An instrument is an instrument and these clearly are.

The argument that they press more today and on reply deals with an exclusion to the definition of indebtedness contained in the 1987 Indenture. I just want to look at that briefly for a moment. It is the exclusion to the term of what indebtedness is, where it excludes indirect guarantees or other contingent obligations in connection with the indebtedness of others. Then it gives some examples of what these kinds of things would be: agreements to purchase or repurchase obligations of such other persons, agreements to advance or supply funds to or invest in such other persons, take-or-pay, keep-well, make-whole, cash deficiency, maintenance of working capital or earnings or similar agreements.

A Reimbursement Agreement simply doesn't fall within any of that class of exclusion. It is a direct obligation by Enron to the Banks. It is not guaranteeing other third parties' performances. It is in no way other third parties' beneficiary. It is basically a financing tool used by Enron, one to which their obligation to payback is absolute, unconditional and irrevocable.

I just wanted to give one example, which I think is helpful. In essence, under the reasoning that Baupost gives, a revolving line of credit would be a contingent obligation. Because you have the same thing. You have a line of credit of $1 billion hypothetically, and at any point in time half of it can be drawn down and half of it may not be drawn down. It may be used for third party purposes or not. It really doesn't matter. The fact of the matter is you have got a commitment out there and the Banks have to honor it, and if Enron draws on it, the obligator then has to pay back. So I think clearly the letters of credit under the 1987

Indenture are Senior Indebtedness.

Just briefly as to the TOPRS Indentures, again, TOPRS definition requires or deals with debt evidenced by notes, bonds, or other securities sold by the Company and capitalized leases, unless subordinated or unless a trade credit. The letters of credit are clearly not trade credit. By their terms, they are not to be subordinated. They constitute a written promise to pay, which is the equivalent of a bond, and clearly fall within the scope of the definition of "Senior Indebtedness."

So in conclusion, Your Honor, using the plain meaning within the four corners of these various contracts, it is I think crystal clear these claim were all properly classified by the Debtors as senior debt on Amended Schedule S.

If Your Honor has no further questions, I would respectfully ask that you overrule the Objection.

MS. KRIEGER: Good morning, Your Honor. Arlene Krieger from Stroock & Stroock

& Lavan on behalf of Bayerische Hypo-Und Vereinsbank AG, which I will refer to as "HVB" in this presentation.

Just to give a little bit of background, prior to the Petition Date, Enron and HVB entered into a Master Letter of Credit and Reimbursement Agreement, which was amended from time to time. Pursuant to this Reimbursement Agreement, Enron had the ability to request and did request that HVB issue a number of letters of credit to support the performance of obligations of Enron or its subsidiaries to various third-party beneficiaries. Like Chase, it is a way of providing credit support, a kind of financing tool.

Three of the letters of credit were fully drawn prior to the Petition Date, and HVB paid the respective beneficiaries of those LLCs. The result, Your Honor, is that HVB advanced $81 million for the benefit of Enron and has claims for that principal amount, plus claims for outstanding fees and other obligations under the Reimbursement

Agreement. One letter of credit in the principal amount of $32.5 million remains outstanding and, if drawn, would further increase the amount of HVB's claims against Enron in their Reimbursement Agreement.

JUDGE GONZALEZ: Speak louder, please.

MS. KRIEGER: Sorry, Your Honor. I will try.

Your Honor, as has been indicated, the Schedule S initially, as put forward by Enron, provided for Letter of Credit Claims, claims arising from and relating to the issuance of letters of credit to be entitled to the subordination provisions of each of the Subordination Agreements at issue. Then in the interim, between the time that they filed their initial Schedule S and they filed the Amended Schedule S, they had spent a great deal of time, one assumes, looking through that list and decided, again, that Letter of Credit Claims or at least certain Letter of Credit Claims, including HVB's claims, were entitled to all of those

subordination benefits. HVB will only address the Letter of Credit Claims. It does not have any Intercompany Claim issues here.

I will join with the arguments that have already been made and won't reiterate those by John Hancock and Chase with respect to the burden of proof that was argued by Baupost. We think that that is not correct and not supported. This is a different circumstance, and I would argue as well, Your Honor, that the Best Products case that was cited to by Baupost does not stand for that proposition. In fact, in that case there was no disagreement or issue with respect to the interpretation of the Subordination Agreement.

Your Honor, we believe that we belong on Schedule S. When Baupost filed their objection, obviously, we filed a response challenging those issues. They only filed a pleading which challenged the HVB claims with respect to the 1987 Indenture and the TOPRS Indentures. They did not challenge the senior position of the HVB claims with

respect to the 1993 Loan Agreement nor the 1994 Loan Agreement.

With respect to the 1987 Indenture, Your Honor, we disagree with Baupost's arguments. You have heard a lot of this already, Your Honor, so forgive me. But two of the arguments that they make are: that the LLC claims are indirect guarantees or a contingent obligation. Our Reimbursement Agreement, which was annexed to our pleading, clearly reflects the fact that Enron's indebtedness to HVB for the amount of any draw on a letter of credit is direct and unconditionally payable. Again, there is no contingency here. Once the Bank issues a letter of credit, the commitment is there. There is no contingent obligation. There is an absolute obligation to pay. The only thing that is uncertain is what the amount is, if any, that will have to be paid.

Your Honor, if Enron's indebtedness to HVB was contingent, for example, on XYZ Corp. not satisfying a payment obligation to HVB, in that instance Enron's obligation to

HVB would be contingent. But that is not the circumstance that we have here.

I would further join with Chase's argument. If you look at subsection (4) of the indebtedness provision of the 1987 Indenture, there are specific types of agreements which are indicated as being those kinds of conditional obligations and contingent guaranty circumstances and an obligation under a reimbursement obligation for repayment of amounts, which are drawn under a letter of credit, just don't fit into that scenario.

So, Your Honor, we think that there is no basis to find that HVB's claims fall within the exclusion and, thereby, precludes HVB from constituting indebtedness for purposes of the Senior Indebtedness definition.

With respect to its being an instrument, Your Honor, Baupost, as you have heard, proffered other definitions and looked to the UCC. It looked to a commercial law definition in Black's Law Dictionary. While

those things just are not applicable, the commercial law definition, Your Honor, is applicable to UCC sale of goods situations. That is not what we have here, again. So that is not of relevance. Rather, the Reimbursement Agreement is what Black's Law says as its plain, ordinary meaning definition of the word "instrument." "A written legal document that defines rights, duties, entitlements or liabilities, such as a contract." The Reimbursement Agreement is clearly a contract.

Your Honor, we think on the third prong, although Baupost has not raised that today, of what is required to meet the "indebtedness" or "Senior Indebtedness" definitions for the 1987 Indenture, is that it is for the repayment of money borrowed. We think that there is no argument here with respect to that. Obviously, letters of credit are regarded as the functional equivalent of loans. When HVB issues the LOCs, the loan commitment is made. When LOCs are drawn and HVB had to make payment, the

actual loan is issued, and Enron has an absolute obligation under the terms of the Reimbursement Agreement to repay that loan.

So in sum, Your Honor, we think that the HVB claims under the 1987 Indenture properly meet the definition of "Senior Indebtedness."

We will further point out, not to get into extrinsic evidence, but the Reimbursement Agreement itself reflects in the subordinated debt definition that is in that agreement that Enron's obligations to HVB are superior to Enron's obligations to the Subordinated Debentures issued under the 1987 Indenture.

Moving to the TOPRS Indentures, Your Honor, we also think quite clearly that HVB meets the "Senior Indebtedness" definitions here. The key terms are that its principal due, all indebtedness of Enron, other than any obligations to trade creditors evidenced by notes, debentures, and bonds, unless in the case of any particular indebtedness, it says it is subordinated to

or is pari passu with the securities.

Your Honor, we believe that the type of financial obligation created was intended to qualify as Senior Indebtedness under the TOPRS. Black's Law Dictionary defines a bond to mean, in relevant part, an obligation, or promise, or a written promise to pay money if certain circumstances occur. The Reimbursement Agreement squarely falls within this definition, as that agreement evidences Enron's written obligation to pay money to HVB when a letter of credit is drawn.

The TOPRS Indentures, the "Senior Indebtedness" definition in that indenture, specifically excludes, as I said, indebtedness to trade creditors and indebtedness for those financial obligations where the instrument provides otherwise. The indebtedness created under the Reimbursement Agreement is financial. It is not trade debt, and there are no provisions in the Reimbursement Agreement either subordinating such indebtedness to the TOPRS or stating

that such indebtedness under the Reimbursement Agreement is pari passu with the TOPRS Debentures.

We would also join with the arguments that Chase made in connection with distinguishing the "or other securities sold by Enron for money borrowed" language. We don't think that that qualifies the term "notes or bonds" and, therefore, is not at issue here to disqualify HVB's Reimbursement Agreement.

We, therefore, argue, Your Honor, and submit that HVB's claims constitute Senior Indebtedness under the TOPRS Indentures and are entitled to the benefits of that indenture's contractual subordination provisions.

Your Honor, we don't believe that we need to address the 1993 and 1994 Loan Agreements, because Baupost has not put in any Objection to those. So we think that those are properly on Schedule S as senior debt.

Thank you.

Proceedings

JUDGE GONZALEZ: Is there anyone else responding?

All right. Mr. Winston, you have five minutes for your response.

MR. WINSTON: Thank you, Your Honor. I will try to keep it even shorter than that.

Unless Your Honor has an objection, I am just going to go by indenture on the open issues and just highlight some of the flaws in the arguments that I have heard today.

With respect to the 1987 indenture, the first open issue is what is meant by "corporation," and counsel for JPMorgan cited to what the indenture says. But the interesting thing is the definition of "corporation" (1) uses the word "includes." It doesn't say "it is limited to." It uses the word "includes," and it says "corporations, voluntary associations, joint stock companies, and business trusts." So by that term alone, it is already broader than just a corporation and it uses the word

"includes."

The next step from that is a limited liability company. So for purposes of understanding what is meant by the term "corporation," Enron Finance, a limited liability company, should count.

The next question is the change in voting control. If I understand the argument correctly, if voting control passes to a third party of an Enron affiliate, for all purposes in the future that affiliate does not count as a Subsidiary for the 1987 Indenture. So any time in the past, where someone had voting control of that Enron affiliate, and it was able to vote to put a director on, it will never become a Subsidiary, even though Enron may end up having full voting control. That makes no sense. If at some point voting control passes back into the hands of Enron, it should be counted as a Subsidiary for purposes of that indenture. That was the intent of the exclusion, and I have heard nothing to suggest otherwise.

Now, for Cherokee, it never happened. Cherokee always had a third party controlling or having voting control of that entity. So I have no argument there. But with respect to EEC, which was not included on Schedule S for the 1987 Indenture and for purposes of Enron Finance, it should be the same result.

With respect to the letter of credit arguments on the 1987 Indenture, after arguing that you should look to the entire intent of the document or look at the entire document, HVB and Chase want you to ignore the actual language where it says "notes, bonds, debentures, or other instruments." They use a definition of "bond" taken from Black's Law Dictionary, which does not have any connection to the context of the definition of Senior Indebtedness in the 1987 Indenture. "Notes, bonds, debentures or other instruments," doesn't include contracts. This is a contract to reimburse an obligation owed to a third party. If it wanted to include contracts, it certainly

could have said that. But it is very limited in what it is using. So to suggest that just because a contract may in certain circumstances be called an "instrument" or may be called a "bond," it is not what was intended in this document based upon the plain language of the document. But even if the Court disagrees with me, I don't understand how the conditional obligation exclusion doesn't apply here.

At the moment the Letter of Credit Reimbursement Contract was executed, there was a condition to it. The condition is the letter of credit has to be drawn. Listening to HVB's argument, she skipped over that step, knowing that that is the flaw in the argument. The commission may never come to pass. The letter of credit may never have been drawn, or it may be drawn only partially, which I think is the case for some of these letters of credit. They may be fully drawn. But at the moment that obligation is created, it is a conditional obligation. What else was intended by that

provision?

With respect to the TOPRS, with respect to the Intercompany Claims, it turns on what was meant by "sold by." They have argued that the "sold by Enron" applies only to the term "securities." That, again, is taking the language out of context. It says "notes, bonds, debentures or other securities sold by Enron." The use of the term "other securities" suggests, under the principles that we have cited, that the "notes, bonds, and debentures" are meant to be "other types of securities" -- they just didn't say them all -- and they have to be sold by Enron. These weren't. I agree. This an atypical indenture, but I have to go with what the language says. I am a little surprised at it. I also am surprised it wasn't an expressed exclusion of Intercompany Claims, like there was in the 1987 Indenture. I don't think most indentures have that, but this one is atypical. It still has to be sold by Enron. It has to be the type of thing sold by Enron. There were many

obligations that were, in fact, sold by Enron, one of which we have conceded today, the Enron Equity Corporation Notes were, in fact, sold by Enron.

Again, with respect to the Letter of Credit Claims, it does not make sense to even paint these things as "notes, bonds, debentures, or other securities." Under any circumstances, a letter of credit is not a security. That makes no sense whatsoever and it clearly wasn't sold by Enron.

I can't understand why they used this language in the TOPRS Indentures, but it is not ambiguous. Therefore, as my opposing counsel have already articulated, if the language is unambiguous, you must follow it.

After saying that, I go to the 1993 and 1994 Loan Agreements. I still submit that the term "indebtedness" is ambiguous as used in that document. As we have already seen in the two other indentures, the term "indebtedness" is not universal for every obligation Enron has. There are exclusions to it.

Now, unfortunately, the documents that were executed between Enron and its affiliate don't have any express exclusions or express inclusions. This Court can't conclude that "all indebtedness" means literally everything -- trade claims, to the extent that someone could argue they constitute money borrowed; the Intercompany Claims; and even the Letter of Credit Claims, because we have not objected to them, because we didn't want to go through the brain damage of trying to figure all of that stuff out. But I have got to believe that, because that term is subject to other interpretations, it is possible that, as a counsel for Chase argued, the holder of the obligation is what matters. They intended to exclude Intercompany Claims.

I would submit to Your Honor that under most indentures, Intercompany Claims are excluded. This one didn't expressly do it. I can see that point. But that provision or that term is subject to more than one reasonable interpretation, and parol

evidence will tell us what is really meant by it.

That is all I have to say, Your Honor.

JUDGE GONZALEZ: All right. Thank you. I will take it under advisement.

I am going to take a brief recess. Those of you who haven't given your appearances for the balance of the calendar, please do so.

(Whereupon, from 11:59 a.m. to 12:06 p.m. a recess was taken.)

JUDGE GONZALEZ: Let me just check what remains on the calendar.

All right. Mr. Smith, you are here on the various settlements?

MR. SMITH: I am, Your Honor, on two groups. Thirteen uncontested 9019s and the California settlement is on at 11:55 as well.

JUDGE GONZALEZ: All right. Let's skip that. I apologize for those matters that were skipped over, but if we are going to get these Orders entered today, I need